

**OPINION
73-481**

February 9, 1973 (OPINION)

Mr. Bruce L. Bartch
Director
Business and Industrial Development Department
State Office Building
Bismarck, North Dakota 58501

Dear Mr. Bartch:

This is in reply to your letter of February 7, 1973, in which you request an opinion regarding the North Dakota Indian Development Fund as authorized in Chapter 54-34.2 of the North Dakota Century Code. You state the following facts and questions:

"This opinion request deals with the applicability of a project for Indian Development Fund monies as a condition required by a federal agency. Section 54-34.2-04 reads in part, 'Moneys from the Indian Development Fund may be used for state or local matching funds as may be required by a federal agency. . .'. Section 54-34.2-05 reads in part, ' . . . federal agencies which are to provide major portions of the funds for the project'.

"My question deals with that portion of total project costs supplied by an agency of the federal government. Can all or a portion of a federal agency or agencies contribution be of an in-kind nature, i.e. salaries of federal employees allocated to the project or equipment owned by the federal government assigned for useage to the project?"

The purpose of the fund as set forth in Section 54-34.2-02 of the North Dakota Century Code, as amended, is "to provide Indian communities with matching funds for federal economic expansion programs as may be required by the various agencies of the United States government, and thus provide additional opportunities for the Indian people of North Dakota to take full advantage of such programs."

Section 54-34.2-04, a portion of which is quoted in your letter, provides as follows:

"DEVELOPMENT PROJECT ELIGIBILITY. - Moneys from the Indian Development Fund may be used only for state or local matching funds as may be required by a federal agency for participation in federal Indian development projects. Such projects must be carried out by a tribal council or a corporation approved by the tribal council and organized by Indian people for the purposes of improving their economic well-being."

We note the above statute specifies that monies from the Indian development fund are to be used only for state or local "matching funds" as may be required by a federal agency for participation in federal Indian development projects. The term "matching funds" is

defined by Subsection 3 of Section 54-34.2-03 as follows:

"'Matching funds' shall mean the portion of state or local funds that may be required as a condition for receiving funds from a federal agency." (emphasis supplied)

We are bound by the definition of terms as used in the statute. The matching funds may be used only to receive federal funds. We are not convinced that "in-kind" matching is permitted by Chapter 54-34.2. Thus, as you have noted in your letter, Sections 54-34.2-04 and 54-34.2-05 contemplate funds from the federal agencies and this is the same requirement as contained in the definition of "matching funds."

It is perhaps ironic that in many situations in which the State is to supply matching funds "in-kind" funds are permitted by the federal legislation. It is somewhat unique to receive a question concerning "in-kind" contributions in lieu of actual funds for the federal contribution. However, we are, as noted above, bound by the definition of matching funds as stated by the Legislature in Chapter 54-34.2 and this definition clearly indicates that such matching funds are to be used as a condition for receiving "funds" from a federal agency.

Since the term "funds" is not defined by statute, it must be used in its ordinary sense. See Section 1-02-02 of the North Dakota Century Code. The term "funds" as used in its ordinary sense clearly indicates monies. See Websters New 20th Century Dictionary (2nd edition).

We therefore conclude that the federal agency contribution cannot be of an "in-kind" nature.

Sincerely yours,

ALLEN I. OLSON

Attorney General